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IN THE

Supreme Court of the United States

CITY OF RANCHO PALOS VERDES, CALIFORNIA, ET AL.,

Petitioners,

v.

MARK J. ABRAMS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF PUBLIC CITIZEN, INC., AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether the availability of a right of action under a federal statute is, by itself, sufficient to demonstrate congressional intent to foreclose reliance on 42 U.S.C. § 1983 as a remedy for violations of the statute.

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INTEREST OF AMICUS CURIAE[1]

Amicus curiae Public Citizen, Inc., is a nonprofit advocacy organization with approximately 160,000 members nationwide. It appears before Congress, administrative agencies, and the courts on a wide range of issues involving the protection of consumers and workers, public health and safety, and maintaining openness and integrity in government. One of Public Citizen's particular interests is ensuring that federal and state governments comply with laws that affect ordinary citizens. The ability of citizens to enforce those laws, including through the private right of action authorized in 42 U.S.C. § 1983, is vital to guaranteeing such compliance. The availability of the § 1983 right of action therefore significantly affects this interest.

Another of Public Citizen's principal concerns is the availability and affordability of legal services. Because prevailing parties in actions brought under 42 U.S.C. § 1983 are able to receive reasonable attorneys' fees under 42 U.S.C. § 1988(b), the availability of the § 1983 right of action significantly enhances their ability to obtain and afford legal representation. Public Citizen's attorneys have either represented parties or filed amicus briefs in a number of cases before this Court on attorneys' fees, including *Scarborough v. Principi*, 124 S. Ct. 1856 (2004), *Buckhannon Board and Care Home, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598 (2001), and *Kay v. Ehrler*, 499 U.S. 432 (1991).

Public Citizen's interest in this case is not specific to issues relating to the Telecommunications Act, and we have no view on the validity of the underlying Telecommunications

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[1] Letters of consent from both parties to the filing of this brief have been filed with the Clerk. This brief was not authored, in whole or in part, by counsel for a party, and no person or entity other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

Act claim at issue in this case. But because the remedies provided for under the provision of the Telecommunications Act at issue are so limited, the assertion of the petitioners and the Solicitor General that they are "comprehensive" enough to render § 1983 unavailable would have potentially far-reaching consequences and could significantly limit the utility of § 1983 as a tool for remedying violations of federal law. Accordingly, we file this brief as amicus curiae in support of the respondent.

SUMMARY OF ARGUMENT

In *Maine v. Thiboutot*, 448 U.S. 1, 4 (1980), this Court held that 42 U.S.C. § 1983 "encompasses violations of federal statutory as well as constitutional law." When a statute creates an enforceable right, violations of that statute can be remedied through the § 1983 right of action, unless the defendant can show, through "express provision or other specific evidence from the statute itself," that Congress intended to withdraw the remedy. *Wright v. City of Roanoke Redev. & Hous. Auth.*, 479 U.S. 418, 423 (1987). This Court has inferred such an intent when the statute contains a "comprehensive" remedial scheme. *Middlesex County Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 20 (1981). The question in this case is whether a single clause of the Telecommunications Act, 47 U.S.C. § 332(c)(7)(B)(v), which provides a judicial right of action to enforce one subparagraph of the Act, is so "comprehensive" that it demonstrates congressional intent to preclude reliance on § 1983 and thus rebuts the presumption in favor of the § 1983 remedy.

The bare-bones right of action created by § 332(c)(7)(B) hardly qualifies as an enforcement "scheme" at all, let alone a comprehensive one. The sole means of enforcement in § 332(c)(7)(B) is in clause (v), which reads:

> Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

These three sentences do not constitute an "elaborate enforcement" scheme, *Sea Clammers*, 453 U.S. at 13, such as those found in the cases in which this Court has inferred congressional intent to preclude reliance on § 1983.

Nor does the remedial scheme in § 332(c)(7)(B) exhibit an intent by Congress to fully occupy the remedial field. When Congress has been so vague about the scope of available remedies and so minimalistic in establishing procedural requirements, there is no basis for inferring that Congress created a carefully calibrated remedial scheme or intentionally limited other statutory remedies. Put differently, the question whether § 1983 is supplanted is one of congressional intent, *see Smith v. Robinson*, 468 U.S. 992, 1012 (1984), and the language of § 332(c)(7)(B)(v) gives no hint that Congress intended to foreclose access to presumptively available remedies.

Petitioners' argument boils down to an assertion that a private right of action within a statute, on its own, demonstrates congressional intent to preclude reliance on § 1983. In the cases in which this Court has found remedial schemes comprehensive, however, it has never relied just on the existence of a statutory private right of action. Instead, the Court has required that the statute's remedial scheme and § 1983 be *incompatible*. There is nothing incompatible about § 1983 and the statutory right of action here: Section 1983 neither provides remedies that Congress expressly foreclosed nor allows plaintiffs to bypass procedural limitations on the statu-

tory right of action, since the Telecommunications Act contains none (except for its 30-day limitations period, which, under 28 U.S.C. § 1658(a), is equally applicable to a § 1983 action). Because § 1983 and the statutory right of action coexist so compatibly, § 332(c)(7)(B)(v) does not "raise a clear inference that Congress intended to foreclose a § 1983 cause of action for the enforcement of ... rights secured by federal law." *Wright*, 479 U.S. at 425.

ARGUMENT

I. SECTION 332(c)(7)(B) DOES NOT CONTAIN THE SORT OF ENFORCEMENT SCHEME THIS COURT HAS FOUND SUFFICIENTLY COMPREHENSIVE TO PRECLUDE RELIANCE ON § 1983.

Section 1983 is a "generally and presumptively available remedy for claimed violations of federal law." *Livadas v. Bradshaw*, 512 U.S. 107, 133 (1994). This Court does "'not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy' for the deprivation of a federally secured right." *Wright*, 479 U.S. at 423-24 (quoting *Smith v. Robinson*, 468 U.S. at 1012). Only twice, in *Sea Clammers* and *Smith v. Robinson*, has the Court found a statute's remedial scheme sufficiently comprehensive to demonstrate congressional intent to foreclose reliance on § 1983.

In *Sea Clammers*, the Court found comprehensive the "unusually elaborate enforcement provisions," 453 U.S. at 13, of the Federal Water Pollution Control Act (FWPCA) and Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). The FWPCA gave the Environmental Protection Agency Administrator "a panoply of enforcement options, including noncompliance orders, civil suits, and criminal penalties." *Blessing v. Freestone*, 520 U.S. 329, 347 (1997). It also allowed interested persons to seek judicial review of various actions by the Administrator and contained citizen suit provisions authorizing only actions for injunctive relief

(and civil penalties payable to the government) and specifying various procedures that had to be followed in instituting such suits. *Sea Clammers*, 453 U.S. at 13-14. The Court found it "hard to believe that Congress intended to preserve the § 1983 right of action when it created *so many* specific statutory remedies ...." *Id.* at 20 (emphasis added).

In *Smith v. Robinson*, the Court held that the Education of the Handicapped Act implicitly foreclosed a plaintiff from using § 1983 to assert a constitutional claim to a free special education. Like the statutes at issue in *Sea Clammers*, the EHA contained "an elaborate procedural mechanism." 468 U.S. at 1010. It incorporated significant parental involvement in educational placement decisions and contained a right to judicial review for aggrieved parties. In light of the comprehensiveness of this "carefully tailored administrative and judicial mechanism," *id.* at 1009, the Court inferred that Congress meant to foreclose a remedy under § 1983 for constitutional claims that paralleled the substantive requirements of the statute.[2] *Id.* at 1011.

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[2]Although *Smith v. Robinson* is often cited as if it concerned whether § 1983 could be used to assert statutory rights under the EHA, that issue was not presented: The plaintiffs in *Smith v. Robinson* expressly disclaimed any effort to "assert[] their [EHA] claim through the 'and laws' provision of § 1983." 468 U.S. at 1005. What the Court actually decided was that the EHA, rather than § 1983, was the exclusive means for asserting *constitutional* claims to a free and appropriate public education. Nonetheless, the Court's reasoning was broad enough to foreclose the use of § 1983 to assert a *substantive* claim to a free and appropriate public education based on the EHA: "We conclude, therefore, that where the EHA is available to a handicapped child asserting a right to a free appropriate public education, based either on the EHA or on the Equal Protection Clause of the Fourteenth Amendment, the EHA is the exclusive avenue through which the child and his parents or guardian can pursue their claim." *Id.* at 1013. At the same time, however, the Court made clear that its holding did not necessarily foreclose the use of § 1983 to challenge the adequacy of state and local administrative *procedures* under the EHA, because such claims would not involve bypassing the extensive adminis-

(*Footnote continued*)

Section 332(c)(7)(B) does not even come close to containing the sort of enforcement scheme found to be comprehensive enough to foreclose resort to § 1983 in *Sea Clammers* and *Smith v. Robinson*. In contrast to the FWPCA and EHA, § 332(c)(7)(B) does not contain multiple enforcement options for both the federal government and private parties; it does not include detailed procedural mechanisms and guarantees; it does not delineate *any* administrative processes an aggrieved party must undergo before seeking judicial review; and it does not limit the nature of the judicial remedies available under the statute.

Instead, the subparagraph contains just three sentences on enforcement: The first sentence creates a right of action. The second specifies that the court should expedite the action. The third sentence provides that persons adversely affected by violations of § 332(c)(7)(B)(iv) may (but need not) also petition the FCC for relief (although it does not specify what relief the FCC may provide). Though the subparagraph involves the preservation of (and limits on) local zoning authority, it does not require the aggrieved party to resort to any particular administrative procedures before local government bodies prior to bringing an action to redress claimed violations. And although the section allows an aggrieved party to go to court, it does not expressly tailor the remedies that can be received to the harm that has been suffered. Indeed, the section says nothing at all about what remedies are available. In short, the enforcement "scheme" of § 332(c)(7)(B) is sparse, to say the least. The three brief sentences dealing with enforcement in § 332(c)(7)(B) do not constitute a comprehensive enough scheme to imply congressional intent to supplant § 1983.

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trative remedies available for *substantive* violations of the EHA and would therefore not necessarily be "inconsistent with the EHA's comprehensive scheme" even assuming that they could also be asserted in an action brought directly under the EHA itself. *Id.* at 1014 n.17.

This is not to say that Congress always needs to establish multiple, expansive remedies to demonstrate its intent to foreclose reliance on § 1983. A remedial scheme need not contain all the remedies offered by § 1983 to be sufficiently comprehensive to displace § 1983. In *Sea Clammers* itself, for example, the citizen-suit provision only allowed private persons to sue for injunctive relief, not for other remedies available under § 1983. What *is* required to displace § 1983 is evidence that Congress intended for the enforcement mechanisms it provided in the statute to fully occupy the remedial field. *See Wright*, 479 U.S. at 423 (describing the remedial scheme under consideration in *Sea Clammers* as a scheme that "left no room for additional private remedies under § 1983"). Thus, the very fact that the citizen-suit provision of the FWPCA limited the remedies available was evidence that Congress had considered all the various possible remedies and made a conscious decision to provide only for the ones that it thought would best suit its purposes. In such a circumstance, it could be inferred that Congress "provide[d] precisely the remedies it considered appropriate," *Sea Clammers*, 453 U.S. at 15, and did not intend for private parties to bypass remedial limits by turning to § 1983. Here, however, there is no evidence that Congress engaged in such considerations and made such decisions.

Petitioners focus extensively on the idea that, in creating the enforcement scheme in § 332(c)(7)(B)(v), Congress created a "specific and calibrated" remedy. Pet. Br. 15. Yet it is difficult to conclude that Congress created a carefully calibrated remedial scheme when the statute itself is completely silent about remedies. To be sure, the creation of a private right of action carries with it "all appropriate remedies unless Congress has expressly indicated otherwise," *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 66 (1992), and therefore private parties can receive remedies through the private right of action created by Congress in § 332(c)(7)(B)(v). The issue, however, is not whether reme-

dies would be available for violations of § 332(c)(7)(B) absent recourse to § 1983; rather, the question is whether Congress created a "carefully tailored scheme," *Smith*, 468 U.S. at 1012, that it intended to supplant all other remedies. The existence of a general background rule that applies when Congress has been silent does not demonstrate such intent on the part of Congress. It requires a great mental leap to assume that Congress engaged in a careful calibration of right and remedy, providing for exactly the remedies it wanted and excluding all others, while remaining absolutely silent on the topic. It makes much more sense to conclude that, in drafting § 332(c)(7)(B), Congress did not mean to define exactly what remedies it wanted to provide, but rather sought only to ensure, as the statute does on its face, that aggrieved persons can go to court and receive speedy relief of some kind.

II. A STATUTORY RIGHT OF ACTION, ON ITS OWN, DOES NOT PRECLUDE RELIANCE ON § 1983.

Apparently recognizing that § 332(c)(7)(B) lacks the ordinary hallmarks of comprehensiveness, petitioners (and the Solicitor General) argue that whenever a statute creates a judicial right of action it should be treated as "comprehensive" within the meaning of *Sea Clammers* and *Smith v. Robinson*. This Court has never held, however, that a judicial right of action, by itself, makes a statutory enforcement scheme sufficiently comprehensive to supplant § 1983. In particular, neither *Sea Clammers* nor *Smith v. Robinson* foreclosed resort to § 1983 solely because a statute contained a judicial right of action.

In *Sea Clammers*, the Court concluded that the enforcement scheme was comprehensive because of the "*many* specific statutory remedies, *including* the two citizen-suit provisions." *Sea Clammers*, 453 U.S. at 20 (emphasis added). Though the existence of the citizen-suit provisions was clearly important to the Court, it was not just the existence of those provisions, but the fact that there were "so many" statutory remedies, *id.*, that led the Court to conclude that Congress had intended to preclude reliance on § 1983. Nothing in *Sea Clammers* suggests that the Court would have found the bare existence of some right of action in court enough to erase the presumption that § 1983 is available to enforce statutory rights.

Smith v. Robinson made even clearer that the existence of a private right of action in a statute is not determinative of whether the statute's enforcement scheme is comprehensive (and thus exclusive). There, the Court concluded that Congress could not have intended for children with equal protection claims to a publicly financed special education to enforce their claims through § 1983 because "[a]llowing a plaintiff to circumvent the EHA *administrative remedies* would be inconsistent with Congress' carefully tailored scheme." *Smith*, 468 U.S. at 1012 (emphasis added). The "comprehensive nature of the procedures and guarantees set out in the EHA and Congress' express efforts to place on local and state education agencies the primary responsibility for developing a plan to accommodate the needs of each individual handicapped child" led the Court to conclude that Congress could not have intended to "leave undisturbed the ability of a handicapped child to go directly to court with an equal protection claim to a free appropriate public education." *Id.* at 1011. In other words, it was the statute's focus on the required procedures before the local and state education agencies, not just the judicial right of action that followed, that led the Court to find the scheme comprehensive.

Indeed, the Court strongly suggested in *Smith v. Robinson* that the mere existence of a judicial right of action under the EHA would not itself be enough to foreclose a § 1983 action. The Court explicitly noted that a procedural EHA claim might be maintainable under § 1983 even if it could also be brought directly under the statute, because such a procedural challenge would not involve evasion of the EHA's administrative remedial scheme. *Id.* at 1014 n.17. The Court's dis-

cussion of this point emphasizes that it was not the EHA's judicial remedies alone that the Court deemed comprehensive, but rather its integrated administrative-judicial remedial scheme.

Of course, the absence of a private right of action is important in concluding that a statute *does not* contain a sufficiently comprehensive enforcement scheme. This Court has stated that "a plaintiff's ability to invoke § 1983 cannot be defeated simply by '[t]he availability of administrative mechanisms to protect the plaintiff's interests." *Blessing*, 520 U.S. at 347 (quoting *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 106 (1989)). Thus, the Court has not found enforcement schemes that did not contain private rights of action to be "comprehensive." *See, e.g.*, *Blessing*, 520 U.S. at 348 (concluding that statute that contained no private remedy was not comprehensive enough to foreclose reliance on § 1983); *Wright*, 479 U.S. at 427-29 (finding no congressional intent to preclude § 1983 where the only private remedy contained in the statute at issue was access to local grievance procedures). That a judicial right of action may be *necessary* for a statutory scheme to be comprehensive enough to close the door on § 1983 liability, however, does not mean that it is *sufficient* to do so.

This Court's decision in *Gonzaga University v. Doe*, 536 U.S. 273 (2002), also suggests that a statutory right of action, on its own, is not sufficient to preclude a § 1983 remedy. There, the Court noted, in holding that the Family Educational Rights and Privacy Act of 1974 (FERPA) did not create a personal right that could be enforced through § 1983, that its "implied right of action cases should guide the determination of whether a statute confers rights enforceable under § 1983." *Gonzaga*, 536 U.S. at 283. In other words, *Gonzaga* suggested that if a statute did not support its own right of action, it was less likely to support a § 1983 action. *Gonzaga* also pointed to the *absence* of a private right of action among the statutory enforcement mechanisms for FERPA as

further support for its holding that the statute at issue created no private rights enforceable under § 1983. *Id.* at 289. In light of *Gonzaga*, a holding that § 1983 is also unavailable whenever a statute *does* contain its own right of action would leave little or nothing of the *Maine v. Thiboutot* presumption that, as its plain text states, § 1983 is available to redress federal statutory violations.

If a private judicial right of action automatically supplanted § 1983, § 1983 would only apply in the small category of cases in which the statute at issue passed the first part of the test for determining whether there is an implied right of action — whether the statute demonstrates Congress's intent to create an enforceable right — but failed the second part of the test — whether the statute demonstrates Congress's intent to create a judicial remedy for that right. *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001) (describing the task in determining whether there is an implied right of action as discerning whether the statute displays congressional "intent to create not just a private right but also a private remedy"). It would be paradoxical, however, to determine that a § 1983 remedy is not available in cases in which Congress has made clear that it intended for there to be a private remedy to enforce the right, but is available in cases in which Congress has not made that intent clear.

III. AN ENFORCEMENT SCHEME PRECLUDES RELIANCE ON § 1983 ONLY IF IT IS INCOMPATIBLE WITH THE § 1983 REMEDY.

The basic principle animating this Court's decisions on the use of § 1983 to enforce statutory rights is that congressional intent to displace § 1983 may be inferred when a § 1983 remedy would be "'inconsistent with Congress' carefully tailored scheme.'" *Blessing*, 520 U.S. at 346 (quoting *Golden State Transit Corp.*, 493 U.S. at 107). The fundamental test for whether a statute's enforcement scheme supplants § 1983 is not whether it contains some means of enforcing the rights created by the statute, but whether § 1983 is some-

how incompatible with that means. *See Blessing*, 520 U.S. at 341 (explaining that Congress can supplant § 1983 either expressly or "by creating a comprehensive enforcement scheme that is *incompatible* with individual enforcement under § 1983") (emphasis added).

Thus, in *Smith v. Robinson*, this Court found the EHA's enforcement scheme to be sufficiently comprehensive because it could not reconcile the ability of parties to go straight to court under § 1983 with the detailed administrative procedure established under the EHA. Allowing a plaintiff to go straight to court, the Court noted, would "render superfluous most of the detailed procedural protections outlined in the statute," and "run counter" to Congress's desire for extensive interactions between parents and local education agencies. *Smith*, 468 U.S. at 1011-12. *Id.* at 1012. Similarly, in *Sea Clammers*, the statute at issue not only limited the remedies available in citizen suits, but also placed various other limitations on such suits, requiring plaintiffs, for example, to give notice to the EPA, state, and alleged violator at least sixty days before filing suit. *Sea Clammers*, 453 U.S. at 6. A party who went straight to court seeking damages under § 1983 would bypass those limitations.

In contrast, an aggrieved party who seeks to enforce § 332(c)(7)(B) through § 1983 is not evading any requirements established by Congress. The principal method for enforcing § 332(c)(7)(B), provided expressly by the statute itself, is a private right of action. When there are no special prerequisites to a statutory private right of action and no express limits on the remedies available, there is absolutely nothing incompatible about allowing a § 1983 action to be brought in tandem with the statutory right of action. Doing so does not allow a plaintiff to bypass congressional limitations or undermine congressional intent.

Maine v. Thiboutot, in which this Court established that § 1983 applied to claims based on statutory violations, confirms that § 1983 rights of action are not incompatible with

other private rights of action. In *Thiboutot*, the plaintiffs had a private right of action under Maine state law to appeal the Department of Human Services' reduction of their welfare benefits. 448 U.S. at 3. Nonetheless, the Court found that they could also obtain relief under § 1983. Though the existing right of action was created through state law, and the Court therefore did not need to consider the issue of congressional intent in creating that right of action, the Court's decision shows that § 1983 and other private rights of action can coexist peacefully.

Here, both the § 1983 and § 332(c)(7)(B) claims permit the plaintiff to go to the same court, under the same circumstances, and argue the same facts and law. The only potential difference between the two rights of action is the possible remedies, yet Congress did not expressly limit the remedies available under § 332(c)(7)(B). Under these circumstances, the rights of action in § 1983 and in § 332(c)(7)(B) cannot be considered so incompatible that the Court must infer that Congress intended to preclude plaintiffs from turning to § 1983 for remedies.

The petitioners and the Solicitor General contend, however, that § 1983 is inconsistent with the § 332(c)(7)(B) right of action in two principal respects: First, they argue, attorneys' fees under 42 U.S.C. § 1988 are available in a § 1983 action, but are not provided under § 332(c)(7)(B); and second, § 332(c)(7)(B)(v) establishes a very short 30-day statute of limitations, which, they argue, would not apply to a § 1983 action brought to enforce rights under § 332(c)(7)(B). The first of these points is factually correct, but fails to establish incompatibility of the two remedies. The second is just wrong: Under 28 U.S.C. § 1658(a), the 30-day limitations period provided by law for claims under § 332(c)(7)(B) is fully applicable to a § 1983 action asserting such claims as well.

With respect to attorneys' fees, it is of course correct that under the "American Rule," attorneys' fees are generally not

available unless a statute expressly provides for them, and § 332(c)(7)(B)(v) does not provide for attorneys' fees. *See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 247 (1975). It is equally true that if § 1983 is available to enforce § 332(c)(7)(B), a prevailing party may be eligible for fees under 42 U.S.C. § 1988. *Maine v. Thiboutot*, 448 U.S. at 8-11. But that does not make the two remedies "incompatible," nor does it mean that Congress could not have intended a § 1983 remedy to be available.

Whenever a party attempts to use § 1983 to enforce a statutory right, that is because § 1983 provides something that the statutory remedies by themselves do not. Otherwise, resort to § 1983 would be superfluous. In many instances, of course, that "something" is attorneys' fees. To hold that § 1983 is unavailable whenever it provides for attorneys' fees (or anything else that Congress did not expressly provide in the underlying statute) would render *Maine v. Thiboutot* meaningless by limiting § 1983's availability to cases in which it is unnecessary.

Thus, Congress's silence about attorneys' fees in § 332(c)(7)(B) means only that Congress did not provide for that remedy in a direct action under the statute. It says nothing at all about whether Congress intended to foreclose the availability of fees through the otherwise applicable remedy for a violation of federal statutory rights — § 1983.

As for the statute of iimitations, this case falls within an exception to the general proposition that statutes of limitations for § 1983 claims are borrowed from state law. Under 28 U.S.C. § 1658(a), that principle is inapplicable to cases in which § 1983 is used to enforce rights first created by statutes enacted after December 1, 1990. Section 1658(a) provides that "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after [December 1, 1990] may not be commenced later than 4 years after the cause of action accrues." In *Jones v. R.R. Donnelly & Sons Co.*, 124 S. Ct. 1836 (2004), this Court held that a claim

arises under a statute enacted after December 1, 1990, if the claim "was made possible by a post-1990 enactment" — even if the cause of action is brought under a statute, such as 42 U.S.C. § 1981 or § 1983, that long predates 1990. *Id.* at 1845. The claim in this case arises under a provision of the Telecommunications Act enacted in 1996, and § 1658(a) therefore applies.

That does not mean, however, that the statute of limitations applicable to a § 1983 claim is four years. Section 1658(a) provides for a four-year limitations period only if there is no limitations period "otherwise provided by law." Here, the law under which the claim arises for purposes of § 1658(a) specifies that the claim is subject to a 30-day limitations period. Thus, the four-year limitations period is inapplicable, and the statute of limitations for the claim, whether brought directly under the statute itself or under § 1983, is 30 days.[3] Because of the applicability of § 1658(a), there is no danger that the availability of an action under § 1983 will permit litigants to circumvent the limitations period otherwise provided by law for claims under § 332(c)(7)(B). Consequently, there is nothing incompatible about the statutory remedy and the § 1983 remedy, and thus no basis for inferring congressional intent to eliminate the latter.

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[3] *Cf. Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 359 (1991) ("[W]here, as here, the claim asserted is one implied under a statute that also contains an express cause of action with its own time limitation, a court should look first to the statute of origin to ascertain the proper limitations period.").

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

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